

***PUBLIC CONSULTATION ON
WESTERN POWER CORPORATION
STANDARD FORM CONTRACTS***



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

Response by the
Western Australian Council of Social Service
to the Economic Regulation Authority on the
proposed Standard Form Contracts.

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SUBMISSION OUTLINE

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INTRODUCTION

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. With over 350 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of the disadvantaged individuals and families they assist at a service level. Given this relationship, WACOSS is in a unique position to comment on issues in our society that socially impact upon disadvantaged members of the community.

WACOSS is respected within both government and non-government arenas as being an authoritative voice for consumers with regard to energy market reform in Western Australia. WACOSS has developed a strong network with utility policy workers across Australia, which provides us with information and expert opinion on these issues.

In March 2005, WACOSS commenced the Consumer Utilities Project, funded through the Department of Consumer and Employment Protection. This Project builds upon the utility policy work WACOSS has undertaken over the past 4 years. The Consumer Utilities Project has been established to work with consumers and representative organisations to achieve better outcomes in the provision of essential services.

WACOSS has direct access to the issues of low-income and disadvantaged consumers through our Consumer Reference Group, which includes representatives from the Emergency Relief sector, Unions, Financial Counsellors and Community Legal Centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utility issues. We have taken on this role due to the level and severity of the utility issues being raised by community agencies and the absence of any other resourced body in Western Australia representing these issues.

WACOSS considers it is important to respond to this public consultation on Western Power's proposed Standard Form Contract.

WACOSS SUBMISSION FOCUS

The WACOSS response to the proposed Standard Form Contract, must be placed within the broader context of our concerns for essential service provision and regulation in Western Australia. All Western Australians should have access to safe, reliable, affordable electricity, regardless of their capacity to pay.

Our submission focuses on the rights and obligations of both customers and retailers, under a standard form contract. In responding to this, we present a set of principles for consumer protection and benefit, which we believe should underpin the standard form contract.

These principles address electricity's special characteristics, consumer vulnerability, effective regulation, energy market effectiveness and consumer protection frameworks. We discuss them against the individual clauses of the Standard Form Contract wherever possible and make a number of recommendations for additional and revised clauses.

Customer contracts are a crucial mechanism for protecting electricity consumers. They form a direct interface between the retailer and customer setting out the rights and obligations of each. They are also intended to deliver on the consumer protections set out in legislation and regulatory protections.

It is important that customer contracts provide enough information to customers, to ensure they are made aware of their rights, as well as their obligations.

The contracts must provide details of how customers can access information about their rights. This should include a referral to legislative protections.

The contracts are required by Regulation to make all such information available in a format that is easy to read, clear, simple and concise. This is vitally important to consumers accessing their rights and fulfilling their obligations, under any contract arrangement.

WACOSS believes that, on balance, the proposed Standard Form Contract concentrates heavily on the obligations of customers, and does not provide enough information or support to customers to assist them to understand and access their rights and obligations upon the retailer.

We believe that retailers must be required to provide all customers with a written copy of the contract. The information contained within the contract is vital, and customers are unlikely to request it, and therefore risk being adversely affected by conditions within the contract which they are not aware of.

The WACOSS submission gives consideration to the proposed Standard Form Contract, in respect to consistency with the Electricity Industry (Customer Contracts) Regulations 2005 (the Regulations) and the Code of Conduct for the supply of electricity to small use customers (the Code of Conduct).

Absence of comment on any section of the Standard Form Contract should not be taken as support for or opposition to the proposed clauses.

Clause Number	Issue & Relevant Clause	Comments and Recommendations
	NOTIFICATION OF WHO THE RETAILER IS	Regulation 7 requires retailers to provide comprehensive contact information. Although this information is included, it is not provided until the end of the contract. WACOSS recommends this information is brought forward to the beginning, so that customers are aware it is there, and how to contact the retailer from the start of reading through the contract.
	LAYOUT	WACOSS believes the design of the contract could be improved significantly in order to meet regulation 5 which requires it to be “in a format that makes it easy to read.”
	INTERPRETATION ASSISTANCE	WACOSS recommends that the contract identifies interpretation assistance, including translation services for people with English as a second language, for people living with disabilities, or other impediments to understanding the contract, which would affect their capacity to enter the contract with informed consent.
	LANGUAGE	The language of the contract could be improved to facilitate understanding by customers, in accordance with Regulation 5 which requires the contract to be “expressed in clear, simple and concise language.”
	PRICE	<p>WACOSS would like to see contracts provide, clear and concise information regarding price, including price variations, peak and off peak payment options, any discounts that may apply, and how variations from base rates are calculated. To assist customers to understand this, contracts should include a range of exemplary models of price options and impacts on different household consumption types. This kind of information is vital to customers making informed decisions, about their financial interest, based on their consumption type.</p> <p>WACOSS understands that the Standard Form Contract includes both the terms and conditions, and the tariff information, but consultation is only taking place around the terms and conditions.</p> <p>Regulation 13.2 requires the contract to include details of retailers’ obligations to provide tariff information.</p>

3	<p>CONTRACT COMMENCEMENT</p> <p>If <i>you</i> have requested <i>us</i> to supply electricity over the telephone, the <i>contract</i> begins on the date that <i>you</i> accept <i>our</i> offer to supply electricity to <i>you</i>. Otherwise, the <i>contract</i> begins on the date that both <i>you</i> and <i>we</i> sign the <i>contract</i>.</p>	<p>WACOSS would like the contract to specify who the parties to the contract are, the retailer and the customer/account holder. We understand that there have been circumstances where the retailer has required multiple account holders in a single premise.</p>
4.5	<p>REBATES</p> <p>If you are eligible for a rebate and you apply to us, we will provide that rebate to you. You can contact us if you have any queries about any rebates.</p>	<p>WACOSS recommends that the retailer refer to the types of rebates that may be available to assist customers.</p> <p>The contract should also specify when rebates will be paid to the customer, and whether or not they will be back-paid, and if so, wether to the date that the customer became eligible for the rebate, or some other date.</p>
5.1	<p>METER READING</p> <p>... <i>Western Power Networks</i> reads the <i>meter</i> at <i>your premises</i> at least once every 12 months.</p> <p>If <i>we</i> cannot reasonably base a bill on <i>Western Power Networks'</i> reading of the <i>meter</i>, then <i>we</i> will provide <i>you</i> with an estimated bill based on:</p> <p>(a) <i>your</i> reading of the <i>meter</i>; or</p> <p>(b) <i>your</i> prior billing history; or</p> <p>(c) if <i>we</i> do not have <i>your</i> prior billing history, the average usage of electricity by those customers who <i>we</i> consider are in a comparable position to <i>you</i> (generally by location or usage pattern).</p> <p><i>If we have provided you with an estimated bill and we subsequently read the meter, then your next bill will be adjusted to take account of our meter reading.</i></p>	<p>WACOSS recommends that as per clause 7.2, this clause include information about account adjustments to clarify that customers will be repaid overcharged amounts indefinitely but are only required to repay any undercharged amount from the previous 12 months.</p>
6.1	<p>BILLING CYCLES</p>	<p>WACOSS recommends that this clause include the right of customers to request a</p>

	<p>We will bill <i>you</i> in accordance with the billing cycle that <i>we</i> set for <i>our</i> customers from time to time. As an indication, our billing cycle is no more than once every one month and no less than once every three months.</p>	<p>shorter billing cycle, if the retailer allows it.</p>
6.2	<p>PAYING YOUR BILL</p> <p><i>You</i> must pay the total amount payable for each bill by the due date specified in that bill. The due date will be at least 12 <i>business days</i> from the date of the bill.</p> <p><i>You</i> can find out the range of payment options that <i>you</i> can choose from by referring to <i>your</i> bill, by visiting <i>our</i> website or by calling <i>our</i> customer service centre.</p>	<p>WACOSS does not believe that this provides enough information to meet the requirements of Regulation 14, which requires the contract to specify “the procedures to be followed by the retailer in relation to the preparation, issue and review of a customer’s bill.” Reference to the main payment options should be made here together with a reference to information about tariff options.</p>
6.3	<p>PAYMENT DIFFICULTIES</p> <p>If <i>you</i> are having trouble paying <i>your</i> bills, please advise <i>us</i> and <i>we</i> may be able to offer <i>you</i> some options (including instalment plans) to assist <i>you</i> in accordance with <i>our</i> payment difficulties and financial hardship policy.</p>	<p>The contract should include reference to the obligation of the retailer to assist customers experiencing payment difficulties. The retailer should express a commitment to assist customers, not ambiguous words such as “may be able to offer.” The clause should also refer to the relevant legislation concerning the rights of customers experiencing payment difficulties.</p>
	<p>FINANCIAL HARSHIP OBLIGATIONS</p>	<p>WACOSS believes the contract should also inform people of their rights not to be disconnected in particular circumstance, what those circumstances are, and when they apply. A clause should be included to specifically refer to the obligations of the retailer to assist people in financial hardship, and maintain their connection to supply. Reference to relevant parts of the Code of Conduct would also be useful in order to improve customer awareness of their rights. Currently, the public awareness level of the Code of Conduct, and customers’ rights under it, is still very low.</p>
7.2	<p>UNDERCHARGING AND OVERCHARGING</p> <p>If <i>we</i> undercharge <i>you</i> for any reason (including</p>	<p>The contract should specify that overcharged amounts will be repaid in full and are not limited to the previous 12 months.</p>

	<p>where the <i>meter</i> has been found to be defective), we can require <i>you</i> to make a correcting payment and we will offer <i>you</i> the option to pay the correcting payment by instalments. In any event, we will only require <i>you</i> to make a correcting payment for amounts undercharged in the 12 months prior to the date that we advise <i>you</i> that <i>you</i> have been undercharged.</p> <p>If we overcharge <i>you</i> for any reason (including where the <i>meter</i> has been found to be defective), then we will credit the amount to <i>your</i> account or <i>you</i> have the option of having the amount repaid to <i>you</i>.</p>	
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8.2	<p>CUSTOMER EQUIPMENT</p> <p><i>You must keep your equipment in good working order and condition.</i></p> <p><i>your equipment means all wiring, apparatus and other works not being Western Power Networks' property on the premises from the position at which the delivery of electricity is made.</i></p>	<p>This clause is potentially misleading, as it is not clear what “your equipment” exactly refers to. Information, should be taken out of definitions and placed within the body of 8.2 but also needs to be made more clear. If the reference is to the electrical wiring in the home of the customer, then it should say so, or at least give examples. The contract should take into account that there may be confusion about who is responsible for customer equipment in rental properties where the equipment referred to is not the property of the tenant.</p>
9.2	<p>NOTIFICATION REQUIREMENTS</p> <p><i>If you move into the premises and it has an existing electricity connection, then we will charge you for electricity supplied to the premises from the date that the meter at the premises was last read, unless you read the meter and advise us of the meter reading within 3 business days of the day that you move in.</i></p>	<p>WACOSS understands that there has been a practice in the past where the retailer will estimate the consumption from the date a customer moved into a premise if they did not notify them at the time. This clause gives an indefinite back-date to which the retailer can charge the customer. We are concerned that there may be some premises which have not had a meter read in some time, even though electricity consumption may have continued at the property. Our proposed solution is that the retailer charge an estimated amount up to a maximum of 5 days prior to the customer moving into a new premise, if they don't provide notification within the required 3 days.</p>
9.3	<p>MOVING OUT OF THE PREMISES</p> <p><i>If you move out of the premises and no longer wish to obtain an electricity supply at the premises, you must advise us:</i></p> <p><i>if the premises are in the Albany, Bunbury, Geraldton, Kalgoorlie or Perth metropolitan area, at least 3 business days before you move out; or</i></p>	<p>WACOSS is concerned that Regulation 23 (Part 3) has been approved, despite being inconsistent with the Code of Conduct and is pleased that the proposed Standard Form Contract reflects that Code of Conduct rather than the Regulations, but understands that this causes legal difficulties. Our proposed solution is that an amendment be made to the Regulations to achieve consistency across the three documents.</p>
12.1	<p>EMERGENCY INTERRUPTIONS</p> <p><i>If we disconnect your electricity supply because you cause that emergency, then we will reconnect your electricity supply when you ask us to do so and we are satisfied that the</i></p>	<p>WACOSS recommends that this clause be amended so that it would only apply to customers if they had intentionally caused an emergency, so that people who experience a household accident, for example through a fire, are not unduly penalised at a time of emergency.</p>

	<p><i>emergency</i> no longer exists. In that case, we can also charge <i>you</i> a <i>fee</i> for reconnecting <i>your</i> electricity supply.</p>	
<p>12.3</p>	<p>EVENTS BEYOND CONTROL</p> <p>If an <i>event</i> occurs which is beyond your control and that <i>event</i> affects your ability to perform any of your obligations under this <i>contract</i>, you must tell us immediately and you will not be required to perform that obligation for as long as the <i>event</i> continues. However, you must pay your bill by the due date shown on the bill, even if an <i>event</i> occurs which is beyond your control.</p>	<p>Regulation 29 requires the contract to deal with the rights and obligations of customers and retailers in the case of events outside of their control. The proposed contract suggests that customers must still meet their payment obligations, even if events happen which are outside their control. It seems feasible, if not likely, that some such events may cause payment difficulties or financial hardship. WACOSS recommends that the second sentence is struck out, and that reference is made to available assistance for such customers.</p> <p>This is particularly important since it seems contradictory that under clause 12.4 retailers do not need to meet their obligations if events occur outside of their control, but that customers would still be required to meet payment obligations.</p>

12.5 (c)	<p>DISCONNECTION – FRAUD, BREACHES, FEES</p> <p><i>We can disconnect your electricity supply, acting in accordance with any applicable laws, if:</i></p> <p>a <i>you fail to pay a bill in full by the due date shown on the bill; or</i></p>	<p>WACOSS is interested in what the interpretation of the word “fraud” is in this clause. How would the retailer determine whether a customer has committed a fraud, and are they legally entitled to make such a determination?</p>
12.5 (e)	<p>b <i>you do not give us safe and unrestricted access to the premises or the meter, or</i></p>	<p>WACOSS believes that this clause is too broad, and do not think it is appropriate that ANY breach of a contract necessarily justifies disconnection from supply.</p>

12.5	<p>c <i>you</i> commit a fraud relating to our supply of electricity to <i>you</i> at the <i>premises</i> or any other premises; or</p> <p>d <i>you</i> get electricity supplied to the <i>premises</i> illegally; or</p> <p>e <i>you</i> get electricity supplied to the <i>premises</i> in breach of this <i>contract</i>.</p> <p>If <i>we</i> disconnect your electricity supply under clause 12.5, then <i>we</i> will reconnect <i>your</i> electricity supply when <i>you</i> ask <i>us</i> to reconnect your electricity supply and <i>we</i> are reasonably satisfied that the circumstances giving rise to the disconnection no longer exist.</p> <p>For example, the circumstance giving rise to the disconnection may no longer exist because <i>you</i> provide access to the <i>premises</i> and the <i>meter</i> or <i>we</i> are reasonably satisfied that <i>you</i> cannot continue to obtain <i>your</i> electricity in the unauthorised way and <i>you</i> have paid all amounts owing to <i>us</i> under this <i>contract</i> (or made an arrangement to pay them).</p> <p>Before <i>we</i> reconnect <i>your</i> electricity supply under this clause 12.5, <i>you</i> must pay <i>us</i>:</p> <ul style="list-style-type: none"> a. all reasonable costs <i>we</i> incur in disconnecting <i>your</i> electricity supply; and b. a fee for reconnecting <i>your</i> electricity supply under this clause 12.5; and c. all electricity that <i>you</i> used (or which <i>we</i> estimate that <i>you</i> used) and have not paid for. 	<p>WACOSS understands that Western Power has not had a common practice of charging a fee for disconnection. Such charges are new and the amount ought to be specified in the contract if it is to be introduced.</p>
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<p>12.6</p>	<p>FEE FOR METER REMOVAL</p> <p>If we disconnect <i>your</i> electricity supply, then:</p> <p>(a) ...</p> <p>(b) we can charge you a fee for removing or physically disconnecting the <i>meter</i> and replacing or physically reconnecting the <i>meter</i>, and</p>	<p>WACOSS understands that Western Power has not had a common practice of charging a fee for meter removal. Such charges are new and the amount ought to be specified in the contract if it is to be introduced.</p>
<p>13</p>	<p>LIABILITY FOR BREACHES AND NEGLIGENCE</p> <p>However, because the quality, frequency and continuity of the supply of electricity are subject to many factors outside of <i>our</i> control, except where <i>you</i> are a <i>consumer</i> and a term implied into this <i>contract</i> requires us to do so:</p> <p>(a) we do not guarantee that the electricity supplied to <i>you</i> will be of any particular quality or that it will be free from surges or that <i>you</i> will obtain a continuous supply of electricity without interruptions; and</p> <p>(b) we will not be liable to <i>you</i> for:</p> <ol style="list-style-type: none"> (1) any loss or damage associated with any surge in the electricity supply or us failing to supply electricity meeting any particular quality; (2) business interruption loss; 	<p>This clause attempts to absolve the retailer of all responsibility for the quality of the energy supply service received. This clause sends a message to customers that the retailer is not willing to take responsibility for the service, and is likely to be negatively perceived by customers considering whether to accept the contract.</p> <p>WACOSS suggests that the clause would be less confusing if it provided information about who is responsible and accountable for service quality and reliability.</p> <p>We recommend that if this clause is included in the contract, information is included to explain that the Networks Corporation has responsibility for quality and reliability of supply and refers to any relevant regulation, including compensation payments available. We also recommend that the contract informs customers that the retailer is able to assist customers in obtaining the relevant information.</p>

	<p>or</p> <ul style="list-style-type: none">(3) lost profits; or(4) loss of an opportunity; or(5) your liability to other people under contracts or otherwise, <p>whether arising from or in connection with <i>our</i> breach of contract, <i>our</i> breach of statutory duty, <i>our</i> negligence or otherwise</p>	
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<p>14</p>	<p>LIMITATION ON LIABILITY IN CERTAIN CIRCUMSTANCES</p> <p>Where any electricity supplied under this <i>contract</i> is not ordinarily purchased for personal, domestic or household use, <i>our</i> liability for breach of a condition or a warranty implied into this <i>contract</i> by the <i>Trade Practices Act 1974</i> (or by similar state laws), to the extent that it is permitted by those laws, is limited to any one of the following determined by <i>us</i>:</p> <p>(a) the supply of equivalent electricity; or</p> <p>(b) the payment of the cost of acquiring equivalent electricity.</p>	<p>WACOSS recommends that this paragraph is redrafted so that it is easier for customers to understand, particularly which types of customers it does and does not refer to.</p>
<p>16</p>	<p>COMPLAINTS</p> <p>If <i>you</i> wish to raise a complaint concerning our performance or <i>your</i> electricity supply, <i>we</i> encourage you to contact <i>us</i> to discuss the issue and <i>we</i> will deal with that complaint in accordance with <i>our customer complaints policy</i>.</p>	<p>WACOSS recommends that the contract specifies the Complaints Handling Standards that the retailer's policy and procedures will comply with.</p>
<p>18.3</p>	<p>ENDING THE CONTRACT</p> <p><i>We</i> can end the <i>contract</i> or stop <i>your</i> electricity supply without giving <i>you</i> prior notice if <i>you</i>:</p> <p>(a) become insolvent (as defined in the Corporations Act 2001 (Cth)); or</p> <p>(b) have a liquidator appointed; or</p> <p>(c) become bankrupt (as defined in the</p>	<p>WACOSS recognises the intent of this clause, but is concerned that it may have unintended consequences for some consumers. It is problematic because customers are threatened with disconnection without notice. In particular clause 18.3 (d) is extremely broad and will appear to most customers as a threat to disconnect them for <i>ANY</i> breach of the contract, without advising them or giving them the chance to rectify the offending breach.</p> <p>In addition, this clause would suggest that anyone who has become bankrupt no longer has a right to electricity supply, even though the Handbook Policy of Western Power deals with people who have been</p>

	<p><i>Bankruptcy Act 1966 (Cth)); or</i> (d) breach any of <i>your</i> obligations under the <i>contract</i>.</p>	<p>Hardship Policy of Western Power deals with people who have been bankrupt.</p>
<p>19</p>	<p>SECURITY PAYMENTS <i>We can require you to provide security from time to time. Usually, security would be in the form of a cash deposit or a bank guarantee.</i></p>	<p>WACOSS is concerned about the inclusion of security deposits in the draft customer contracts. There is a real risk that requesting security deposits will actively and arbitrarily discriminate against some groups of customers. This risk is heightened due the silence of the Code of Conduct on security deposits. WACOSS does not support security deposits, except at the express request of a customer, not a retailer, to accept up front payment. We understand that Western Power is not currently using this practice and recommends that the wording “time to time” is amended so that customers are not concerned that this may become common practice.</p>

21.2	<p>NOTICE</p> <p>Any notice or other communication given under the <i>contract</i>.</p> <p>(a) does not have to be in writing, unless the <i>contract</i> expressly requires that the notice or communication must be in writing;</p> <p>b) subject to clause 21.2(c), is taken to be received:</p> <ol style="list-style-type: none"> 1) in the case of a verbal communication, at the time of the communication; and 2) in the case of hand delivery, on the date of delivery; and 3) in the case of post, on the second business day after posting; and 4) in the case of facsimile, on the date on which the sender's facsimile machine records that the facsimile was successfully transmitted; and 5) in the case of e-mail, on the date on which the sender's computer or other device from which the e-mail was sent records that the e-mail was successfully transmitted; and <p>(c) If received after 5.00 pm or on a day</p>	<p>WACOSS would like to suggest that while notifications may be received by customers, that there is a real problem in the community where not all customers are able to understand notifications that they receive from their retailer. In particular, new migrants, refugees, people with English as a second language or speaking and reading impairments may all have difficulty interpreting notifications.</p> <p>For this reason WACOSS recommends the inclusion of a clause 21.2 (b) 6) if the notification has included information about available interpretation support from the retailer, including translation services.</p>
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	<p>other than a <i>business day</i>, is taken to be received on the next <i>business day</i>.</p>	
21.4	<p>ASSIGNMENT</p> <p>Unless we give <i>you our</i> prior written consent, <i>you</i> must not transfer, assign or otherwise dispose of or deal with any of <i>your</i> rights or obligations under the <i>contract</i>.</p> <p><i>We</i> can assign or novate the <i>contract</i> without notice to <i>you</i> to any person that <i>we</i> believe has reasonable commercial and technical capability to perform <i>our</i> obligations under the <i>contract</i>.</p>	<p>This clause is potentially misleading, particular the words “deal with.” Some customers may interpret that to mean they can not seek representation from a third party about their rights under the contract.</p> <p>WACOSS recommends that the clause is re-worded, and suggests the inclusion of a clause about the customers’ right to seek representation for example from financial counselors or customer representatives.</p>
21.6	<p>APPLICABLE WRITTEN LAWS</p> <p>The <i>contract</i> and all applicable written laws represent the entire agreement between <i>you</i> and <i>us</i> relating to the matters covered by this <i>contract</i>.</p>	<p>WACOSS suggests it would be useful for the contract to provide reference to a comprehensive list of all applicable laws, and where to find them.</p>

	ACCESS TO POLICIES	WACOSS recommends that all retailer policies referred to in the contract are attached to the contract so that they are made available to customers when they request a copy of the contract.
	CONSENT TO CONTRACT	WACOSS would like to know what will happen to a customer who is not willing to provide consent to the contract?
Agreement Schedule	<p>COOLING OFF PERIOD</p> <p>If you are entering into the contract as a result of door to door marketing then:</p> <ul style="list-style-type: none"> • You may end the contract within 10 days from the date of acceptance (the “Cooling Off Period”); • Western Power will not supply you with electricity during the Cooling Off Period unless you request Western Power to do so. and <p>If, at your request, Western Power supplies you with electricity during the Cooling Off Period and you end the contract during the Cooling Off Period, Western Power may charge you for any electricity or services supplied to you during this period.</p>	<p>WACOSS suggests that the contract should specify whether any other fees or charges are payable during the cooling off period, eg connection or disconnection fees.</p>